

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SCOTT T. BALLOCK

Case No.: 1:17-CV-52

Plaintiff,

v.

JURY TRIAL REQUESTED

**ELLEN RUTH COSTLOW, and
STATE TROOPER MICHAEL KIEF,**

Defendants.

**PLAINTIFF SCOTT BALLOCK'S MOTION
FOR EXTENSION OF APPEAL PERIOD**

The Plaintiff, Scott T. Ballock, now moves pursuant to Fed. R. App. P., Rule 4(a)(4)(A)(iii) and Fed. R. Civ. P., Rule 58, to please extend the appeal period to commensurate with the entry of an order resolving the pending defense motion for costs and fees that was filed pursuant to Fed. R. Civ. P., Rule 54 (d)(1).

I. PROCEDURAL HISTORY

A memorandum opinion and order was entered December 20, 2019, (Doc 163). An amended memorandum opinion was entered December 23, 2019, (Doc 164). This was intended to be a final decision on the merits.

The Trooper Defendants' motion for costs and fees, (Doc 165), was served January 6, 2020.

In a memorandum opinion and order (Doc 175 at 3-6), the Court explained that because a separate judgment order document was not entered, Fed. R. Civ. P., Rule 58(c)(2)(B) extended the finality of the summary judgment order until May 18, 2020.

According to Fed. R. App. P., Rule 4(a)(4)(A)(iii), the thirty-day appeal period will run on Wednesday, June 17, 2020, unless the Court extends the appeal period pursuant to Fed. R. Civ. P., Rule 58.

II. LEGAL AUTHORITY

The current motion is rule dependent.

III. ARGUMENT

The Court is not required to grant the motion, but it is timely and in compliance with Fed. R. App. P., Rule 4(a)(4)(A)(iii). The necessary predicate for this motion was the defense motion for costs and fees, filed pursuant to Fed. R. Civ. P., Rule 54 (d)(1), (Doc 165).

Resolution of the motion for costs and fees will better enable Plaintiff to decide whether to file an appeal. The Federal Rules allow for this timely request for an extension of the appeal period, the extension would allow for a comprehensive treatment of the decision on whether to appeal and avoidance of piecemeal appellate practice.

IV. CONCLUSION

For the foregoing reasons, the Plaintiff, Scott T. Ballock, respectfully moves pursuant to Fed. R. App. P., Rule 4(a)(4)(A)(iii) for an extension of the appeal period to be coextensive with the resolution of the pending motion for costs and attorney fees.

Respectfully submitted this 15th day of June 2020.

/s/ Charles J. Crooks

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CERTIFICATE OF SERVICE

I, Charles J. Crooks, Esq., local counsel for the Plaintiff, Scott T. Ballock, hereby certify that on the 15th day of June, 2020, I electronically filed the certificate of service for the foregoing “**PLAINTIFF SCOTT BALLOCK’S MOTION FOR EXTENSION OF APPEAL PERIOD**” with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following:

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